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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/506,489	02/18/2000	Hiroaki Miura	040679/1012	8527

22428 7590 04/29/2003

FOLEY AND LARDNER
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

PIERCE, JEREMY R

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 04/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/506,489

Applicant(s) *8/21/18*

MIURA ET AL.

Examiner

Jeremy R. Pierce

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 April 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-7 and 13-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-7 and 13-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. Amendment C has been filed on April 2, 2003 as Paper No. 17. New claims 15 and 16 have been added. Claims 3-7 and 13-16 are currently pending. The 35 USC 112 rejection set forth in section 4 of the last Office Action has been withdrawn.

Claim Rejections - 35 USC § 102

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 3-5, 7, and 13 are rejected under 35 U.S.C. 102(e) as being anticipated by Van Kerrebrouck (U.S. Patent No. 6,066,388) as set forth in section 6 of the last Office Action.

Claim Rejections - 35 USC § 103

4. Claims 3-7 and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Van Kerrebrouck in view of Matsukawa et al. (U.S. Patent No. 5,554,831) as set forth in section 8 of the last Office Action.

With regard to claims 15 and 16, Van Kerrebrouck teaches the inner layer can comprise between 0 and 80% constructive fibers (column 3, lines 26-30).

Response to Arguments

5. Applicant's arguments filed in Paper No. 17 have been fully considered but they are not persuasive.

6. Applicant argues that Van Kerrebrouck cannot anticipate the presently claimed invention because it was acknowledged in section 8 of the last Office Action that Van Kerrebrouck fails to disclose a polyester fiber having a size smaller than 1 denier. However, Van Kerrebrouck does disclose fibers having a denier of 0.5 dtex (column 3, lines 48-50). As explained in the last Office Action, for the purposes of the 102 rejection, the limitations of Applicant's "sound absorbing layer" are met by Van Kerrebrouck's outer layer, while the limitations of Applicant's "moldable layer" are met by Van Kerrebrouck's inner layer. Whereas in the 103 rejection in section 8, the limitations of Applicant's "sound absorbing layer" were met by Van Kerrebrouck's inner layer, and the limitations of Applicant's "moldable layer" were met by Van Kerrebrouck's outer layer. The inner layer of Van Kerrebrouck did not teach fibers having a denier less than 1 denier. However, the outer layer of Van Kerrebrouck teaches fibers less than 1 denier in size, and therefore, the 102 rejection is still proper.

7. Applicant argues that it would not be obvious to use fibers having a size less than about 1 denier in Matsukawa. However, Matsukawa disclose that it is preferred, in order to obtain increased sound absorption properties, to use fibers less than 2 denier. Thus, Matsukawa teach that fibers with a smaller denier are better at absorbing sound. A person of ordinary skill in the art would assume that the teaching of fibers having a "denier less than 2" would naturally include fibers having a "denier less than 1." A person of ordinary skill in the art would not assume that a "denier less than 2" would

only mean fibers having a denier between 1 and 2, because such a teaching is not explicitly taught by Matsukawa. However, Applicant argues that fibers "having a denier less than 2," as taught by Matsukawa should be interpreted to mean fibers having a denier between 1 and 2. If this were the intention of Matsukawa, it would have been stated in the record. A person of ordinary skill in the art would know that the limitations of Matsukawa include fibers having a denier less than 1, and that such fibers offer increased sound absorption.

8. Applicant argues that Matsukawa would not include fibers having less than 1 denier in the claimed amount of between 20 and 95% because of moldability problems. Applicant supports the argument by saying that Matsukawa disclose a substantial amount (up to 70% by weight) of the fibers in Matsukawa have a size of not less than 6 denier to improve the processability of the material. Even if the fibers having a denier not less than 6 were present in an amount of 70%, the amount of fibers having a denier less than 2 would still be 30%. However, Matsukawa discloses that fibers having a denier of not less than 6 need only be present in an amount of 5% by weight. So, Matsukawa does not require that a "substantial amount" of fibers have a large denier.

9. Applicant argues that there is no motivation to modify the structure of Van Kerrebrouck. However, the Examiner set forth motivation for using smaller denier fibers as increasing the sound absorbing properties of the insulation, as taught by Matsukawa.

10. Applicant argues that Matsukawa fails to disclose the claimed multi-layer configuration. However, Matsukawa was not used to show this feature of the invention. Matsukawa was used to show the use of fibers having a denier less than 1 provide

increased sound absorption. Van Kerrebrouck is used to show the feature of the multi-layered structure.

11. Applicant argues that because Matsukawa does not disclose the claimed multi-layer configuration, one of ordinary skill in the art would not know to provide the claimed amount of fibers having a size less than 1 denier in the sound absorbing layer but not the alleged first moldable layer in Van Kerrebrouck. However, the motivation for combining the references and placing fibers having a denier less than 1 in Van Kerrebrouck is to "increase sound absorption properties." Therefore, it would be obvious to place those fibers in the layer designed to absorb sound, and not the layer designed to provide rigidity and moldability.

Conclusion

12. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

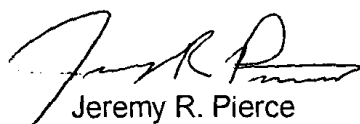
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeremy R. Pierce whose telephone number is (703) 605-4243. The examiner can normally be reached on Monday-Thursday 7-4:30 and alternate Fridays 7-4.

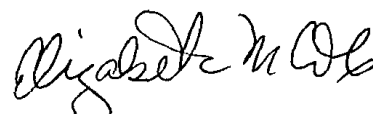
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.



Jeremy R. Pierce
Examiner
Art Unit 1771

April 24, 2003



ELIZABETH M. COLE
PRIMARY EXAMINER